

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs October 27, 2009

**STATE OF TENNESSEE v. RICHARD THOMAS JONES, ALIAS  
THOMAS RICHARD JONES**

**Appeal from the Criminal Court for Hamilton County  
No. 259800 Rebecca J. Stern, Judge**

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**No. E2009-01241-CCA-R3-CD - Filed January 7, 2010**

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The Defendant, Richard Thomas Jones, alias Thomas Richard Jones,<sup>1</sup> appeals the trial court's order revoking his probation for initiation of a process to manufacture methamphetamine, a Class B felony, and ordering him to serve his eight-year sentence in the Department of Correction. We hold that the trial court did not abuse its discretion, and we affirm its judgment.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed**

JOSEPH M. TIPTON, P.J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and JOHN EVERETT WILLIAMS, JJ., joined.

Ardena J. Garth, District Public Defender, and Richard Kenneth Mabee (on appeal) and Kandi Rankin (at trial), Assistant District Public Defenders, for the appellant, Richard Thomas Jones, alias Thomas Richard Jones.

Robert E. Cooper, Jr., Attorney General and Reporter; Leslie E. Price, Assistant Attorney General; William H. Cox, III, District Attorney General; and Bates W. Bryan, Jr., Assistant District Attorney General, for the appellee, State of Tennessee.

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<sup>1</sup>The Defendant testified at the revocation hearing that although he was booked under the name Richard Thomas Jones, his name is Thomas Richard Jones. The indictment identifies the Defendant as Richard Thomas Jones, alias Thomas Richard Jones.

## OPINION

On January 15, 2008, the Defendant pled guilty and was sentenced to serve eight years of probation. On July 31, 2008, a revocation warrant issued charging that the Defendant violated the terms of his probation by failing to obtain employment, changing his residence without notifying his probation officer, failing to report to his probation officer, and failing to pay supervision fees. On September 18, 2008, the trial court amended its judgment of conviction to reflect that the Defendant's probation was extended by two years, based upon a finding the Defendant violated his probation. The record does not reflect the trial court's findings of the factual basis or bases for the revocation. On November 19, 2008, a second violation warrant issued alleging that the Defendant had obtained a new charge of driving on a revoked license, failed to report his new charge to his probation officer, failed to report to his probation officer, failed to pay supervision fees, failed to pay court costs, and failed to follow a "special condition of supervised probation" that he serve ten years of probation. On April 24, 2009, an addendum was filed to the November warrant alleging that the Defendant had been arrested for three traffic-related offenses, that he failed to report his arrest, and that he failed to report to his probation officer. On May 18, 2009, the court conducted a revocation hearing on the November 19, 2008 warrant and its April 24, 2009 amendment.

At the hearing, Jennifer Laferry testified that she was the Defendant's probation officer. She said the Defendant had a previous revocation proceeding, after which he was returned to probation with it being extended for two years. She said that the primary reason for this previous proceeding was the Defendant's failure to report. She said that the Defendant was released from jail on the previous revocation on September 18, 2008, and since that time had never reported to her. She said the Defendant did not report after receiving a certified letter advising him of his next report date. She also went to his home and told him she would have to file a violation if he did not come to the probation office on October 31. Despite the Defendant's assurances that he would report on that date, he did not. She noted that the Defendant had committed new offenses twice during his probation, once before the first revocation when he was arrested for driving on a revoked license, and following the first revocation when he was arrested for driving on a revoked license, violation of the traffic signal law, and failing to have proof of financial responsibility.

On cross-examination, Ms. Laferry stated that she was unaware of the Defendant's medical conditions. She said he told her on October 29 that he had been sick but mentioned nothing about surgery or an ongoing issue.

The Defendant testified that he had experienced medical issues related to blood flow in the arteries in his lower body since being placed on probation in January 2008. He said he had been in the hospital eight or nine times and had surgery twice. He said he may have to have another surgery. The Defendant acknowledged that he had driven when he should

not have but stated that he was trying to get a job and it was difficult to have someone else take him places all the time. He said that if the judge would consider house arrest, he had a place to live and could get a home phone. He said he had no convictions for violent crimes.

Defense counsel asked the court to consider community corrections or split confinement. He argued that these alternatives were more appropriate for the Defendant than prison, given his health problems.

The trial court noted that the Defendant had demonstrated no effort to communicate with the authorities about his medical treatment or provide them with any documentation relative to his treatment and whereabouts. The court found that the Defendant violated the terms of his probation by failing to report and by obtaining new convictions. It ordered the original eight-year sentence into execution.

On appeal, the Defendant argues that the trial court erred in revoking probation and ordering the sentence to be served in the Department of Correction, rather than on community corrections. The State responds that the trial court did not err.

A trial court may revoke probation upon its finding by a preponderance of the evidence that a violation of the conditions of probation has occurred. T.C.A. § 40-35-311(e). If a trial court revokes a defendant's probation, its options include ordering confinement, ordering the sentence into execution as originally entered, returning the defendant to probation on modified conditions as appropriate, or extending the defendant's period of probation by up to two years. T.C.A. §§ 40-35-308(a), (c), -310; see State v. Hunter, 1 S.W.3d 643, 648 (Tenn. 1999). The judgment of the trial court in a revocation proceeding will not be disturbed on appeal unless it appears that there has been an abuse of discretion. See State v. Williamson, 619 S.W.2d 145, 146 (Tenn. Crim. App. 1981).

In the present case, it is undisputed that the Defendant failed to report to his probation officer and acquired new convictions. The trial court did not err in revoking probation. Further, we are unpersuaded that the trial court abused its discretion in ordering the original sentence into execution. The court had, at a previous revocation, allowed the Defendant the opportunity to remain on probation and extended the probation by two years as a sanction for the Defendant's noncompliance. The Defendant made no effort after that reprieve to comply with the terms of probation that he report to his probation officer and refrain from committing new crimes. The court did not abuse its discretion in imposing incarceration, rather than allowing the Defendant an additional reprieve by conditioning his probation upon participation in community corrections. There is no evidence of record to support that the Defendant would make any effort toward compliance with such a sentence.

In consideration of the foregoing and the record as a whole, the judgment of the trial court is affirmed.

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JOSEPH M. TIPTON, PRESIDING JUDGE